

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

In the Matter of)
))
))
 RITE AID CORPORATION,)
 a corporation;))
))
 and))
))
 THE JEAN COUTU GROUP (PJC), INC.,)
 a corporation.))

Docket No. C-

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Rite Aid Corporation (“Rite Aid”) of 100 percent of the common and preferred shares of The Jean Coutu Group USA, Inc. from Respondent The Jean Coutu Group (PJC), Inc. (“Jean Coutu”), and Jean Coutu’s proposed acquisition of 30 percent of the common stock of Rite Aid pursuant to the Stock Purchase Agreement between Rite Aid and Jean Coutu, hereinafter referred to as “Respondents,” and Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45;

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint, and Order to Maintain Assets, and accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

- A. Respondent Rite Aid is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 30 Hunter Lane, Camp Hill, Pennsylvania 17011.
- B. Respondent Jean Coutu is a corporation organized, existing, and doing business under and by virtue of the laws of the Province of Quebec, with its office and principal place of business located at 530 Beriault Street, Longueuil, Quebec, Canada J4G1S8.
- C. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Decision and Order, the following definitions shall apply:

- A. “Rite Aid” means Rite Aid Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Rite Aid Corporation and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Jean Coutu” means The Jean Coutu Group (PJC), Inc., its directors, officers, employees, agents, representatives, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by The Jean Coutu Group (PJC), Inc. and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Respondents” means Rite Aid and Jean Coutu, individually and collectively.
- D. “Acquisition” means Rite Aid’s proposed acquisition of the outstanding voting securities of Jean Coutu and Jean Coutu’s proposed acquisition of 30 percent of the voting securities of Rite Aid pursuant to the Stock Purchase Agreement Dated as of August 23, 2006, between Rite Aid and Jean Coutu.
- E. “Assets To Be Divested” means the assets that comprise the retail pharmacy businesses identified in Schedule A of this Order.

- F. “Commission-Approved Acquirer” means any entity approved by the Commission to acquire any or all of the Assets To Be Divested pursuant to this Order.
- G. “Divestiture Trustee(s)” means any person or entity appointed by the Commission pursuant to Paragraph III. of this Order to act as a trustee in this matter.
- H. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- I. “Pharmacy” means any entity engaged in the retail sale of pharmaceuticals, other than entities whose retail sales are conducted exclusively via the internet, mail-order or telephone and whose transfer of pharmaceuticals to customers occurs exclusively through the mails or any other delivery service.
- J. “Prescription Files” means any and all files or databases containing customer prescription information.
- K. “Purchaser Agreements” means the asset purchase agreements listed below and all amendments, exhibits, attachments, related agreements, and schedules thereto, that have been approved by the Commission to accomplish the requirements of this Order:
1. Asset Purchase Agreement between Rite Aid and Kinney Drugs, Inc., dated May 3, 2007;
 2. Asset Purchase Agreement between Rite Aid and Big Y Foods, Inc., dated May 3, 2007;
 3. Asset Purchase Agreement between Rite Aid and Weis Markets, Inc., dated May 11, 2007;
 4. Asset Purchase Agreement between Rite Aid and Walgreen Co. and Walgreen Eastern Co., dated May 15, 2007 ; and
 5. Asset Purchase Agreement between Rite Aid and Pharmacy Operations, Inc. and its subsidiary Pharmacy Operations of New York, Inc. (hereinafter “Medicine Shoppe International, Inc.”), dated May 9, 2007.
- L. “Retail Drug Store” means a full-line retail store that carries a wide variety of prescription and non-prescription pharmaceuticals and miscellaneous items, including, but not limited to, health and beauty aids, sundries, and other merchandise.
- M. “Apothecary-Style Drug Store” means a retail store that carries a wide variety of prescription and non-prescription pharmaceuticals, including specialty, compounded, or customized pharmaceuticals, nutritional and medical supplies, and provides services relating to, but not limited to, diabetes care and long-term care.
- N. “Third Party Consents” means all consents from any person other than the Respondents, including all landlords, that are necessary to effect the complete transfer to the Commission-Approved Acquirer(s) of the Assets To Be Divested.

II.

IT IS FURTHER ORDERED that:

- A. Respondents shall divest, absolutely and in good faith, the Assets To Be Divested, in accordance with the Purchaser Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of this Order), no later than
1. twenty (20) days after the date on which the Acquisition is consummated, or, in the case of the Assets To Be Divested to Medicine Shoppe International, Inc., forty (40) days after the date on which the Acquisition is consummated, or
 2. four (4) months after the date on which Respondents sign the Agreement Containing Consent Order,

whichever is earlier.

Provided, however, that if Respondents have divested any of the Assets To Be Divested pursuant to a Purchaser Agreement prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that a purchaser identified at Definition K of this Order is not an acceptable acquirer of any of the Assets To Be Divested or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with that purchaser and shall divest the assets transferred to that purchaser within three (3) months of the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-Approved Acquirer and only in a manner that receives the prior approval of the Commission.

- B. Any Purchaser Agreements that have been approved by the Commission between the Respondents (or a Divestiture Trustee) and an acquirer of the Assets To Be Divested shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Purchaser Agreements shall constitute a failure to comply with this Order.
- C. Respondents shall obtain all required Third Party Consents prior to the closing of the Purchaser Agreements or any other agreement pursuant to which the Assets To Be Divested are divested.
- D. Pending divestiture of the Assets To Be Divested, Respondents shall take such actions as are necessary to maintain the full economic viability and marketability of the business associated with those assets, to minimize any risk of loss of competitive potential for such business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of those assets except for ordinary wear and tear.
- E. The purpose of the divestitures is to ensure the continuation of the Assets To Be Divested as ongoing viable enterprises engaged in the Retail Drug Store or Apothecary-Style Drug Store business and to remedy the lessening of competition resulting from the Acquisition alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. If Respondents have not divested all of the Assets To Be Divested as required by Paragraph II. of this Order, the Commission may appoint a trustee to divest (“Divestiture Trustee”) the remaining Assets To Be Divested in a manner that satisfies the requirements of Paragraphs II. and III. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or transfer required by the Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee’s powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
 - 2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If,

however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph III.D.3 in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such Person within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part

on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph III.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

IV.

IT IS FURTHER ORDERED that for a period of ten (10) years commencing on the date this Order becomes final, Respondents shall not acquire, directly or indirectly, through subsidiaries, partnerships or otherwise, without providing advance written notification to the Commission:

- A. Any ownership or leasehold interest in any facility that has operated a pharmacy within five (5) miles of any store to be divested pursuant to this Order within six (6) months prior to the date of such proposed acquisition.

- B. The prescription files from or any stock, share capital, equity, or other interest in any entity that owns any interest in or operates any pharmacy or owned any interest in or operated any pharmacy within five (5) miles of any store to be divested pursuant to this Order within six (6) months prior to such proposed acquisition.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however,* that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

IT IS FURTHER ORDERED that, for a period of ten (10) years commencing on the date this Order becomes final, Respondents shall neither enter into nor enforce any agreement that restricts the ability of any person (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. § 12(a)) that acquires any pharmacy, any leasehold interest in any pharmacy, or any interest in any retail location used as a pharmacy on or after January 1, 2007, within five (5) miles of any store divested pursuant to this Order, to operate a pharmacy at that site if such pharmacy was formerly owned or operated by Respondents.

VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondents have fully complied with the provisions of Paragraphs II. and III. of this Order, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of

all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and

- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which they are complying and have complied with this Order and the Purchaser Agreements.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of such Respondents;
- B. Any proposed acquisition, merger or consolidation of Respondents; or
- C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and
- B. Upon five (5) days notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding any such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date the Order is issued.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:

SCHEDULE A

Pursuant to the terms of the Consent Agreement and this Decision and Order the following assets shall be divested as follows:

1. Rite Aid Store #3342 located at 261 Utica Boulevard, Boonville, NY 13309 will be sold to Kinney Drug Inc.
2. Rite Aid Store #4119 located at Route 5 Memorial Drive, Lyndonville, VT 58511 will be sold to Kinney Drug Inc.
3. Rite Aid Store #4973 located at 957 Memorial Drive, St. Johnsbury, VT 05819 will be sold to Kinney Drug Inc.
4. Brooks Store #0590 located at 87-C West Stafford Road, Stafford Springs, CT 06076 will be sold to Big Y Foods, Inc.
5. Eckerd Store #6240 located at 225 South Mountain Blvd., Mountain Top, PA 18707 will be sold to Weis Markets Inc.
6. Rite Aid Store #0799 located at 234 South Main St., Zelienople, PA 16063 will be sold to Walgreen Co.
7. Brooks Store #0891 located at SWC Bridge & Willow Streets, Pelham, NH 03076 will be sold to Walgreen Co.
8. Rite Aid Store #2570 located at 14 Pinnacle Lane, Walpole, NH 03608 will be sold to Walgreen Co.
9. Eckerd Store #0797 located at 2 North Virginia Avenue, Penns Grove, NJ 08069 will be sold to Walgreen Co.
10. Rite Aid Store #1211 located at 3242 Route 39, Yorkshire, NY 14173 will be sold to Walgreen Co.
11. Rite Aid Store #3641 located at 100 South College Drive, Franklin, VA 23851 will be sold to Walgreen Co.
12. Eckerd Store #6296 located at 40 Denton Plaza, Denton, MD 21629 will be sold to Medicine Shoppe International Inc.
13. Brooks Store #0386 located at 415 Water Street, Gardiner, ME 04345 will be sold to Medicine Shoppe International Inc.

14. Rite Aid Store #3355 located at 145 Main Street, Berlin, NH 03570 will be sold to Medicine Shoppe International Inc.
15. Rite Aid Store #4164 located at 5 Main Street, Peterborough, NH 03458 will be sold to Medicine Shoppe International Inc.
16. Rite Aid Store #0577 located at 941 State Route 17C, Owego, NY 13827 will be sold to Medicine Shoppe International Inc.
17. Rite Aid Store #1861 located at 2156 Grand Island Blvd., Grand Island, NY 14072 will be sold to Medicine Shoppe International Inc.
18. Rite Aid Store #2678 located at #2 Price Chopper Plaza, Mechanicville, NY 12118 will be sold to Medicine Shoppe International Inc.
19. Eckerd Store #5825 located at 45 Hadjus Way, Lake Placid, NY 12946 will be sold to Medicine Shoppe International Inc.
20. Eckerd Store #5961 located at 12 Bank Street, LeRoy, NY 14482 will be sold to Medicine Shoppe International Inc.
21. Eckerd Store #5850 located at 208 South Main Street, Moscow, PA 18444 will be sold to Medicine Shoppe International Inc.
22. Eckerd Store #6008 located at 37 Market Street, Brownsville, PA 15417 will be sold to Medicine Shoppe International Inc.
23. Eckerd Store #8706 located at 533 Greenville Road, Mercer, PA 16137 will be sold to Medicine Shoppe International Inc.